Note of the Inſtruments to which the foregoing Petition relates.

As to the Makers (or Arbitrators) Determination.

1. THe Chargers hath an Inſtrument lying in the Clerks hands, which was taken on the *Place*: Whereby it is Inſtructed, that the Arbitrators found a certain Number of the Hydes inſufficient, *&c.* the Suſpender having offered Implement after the *firſt* of *June:* and one of the Arbitrators ſubſcribes this Inſtrument, and the Overſman who is now Charger, is the *Asker* of it.

2. The Suſpenders own Inſtrument produced, *Acknowledges*, that the Arbiters had found certain of the Hydes inſufficient; but pretends, that thereafter ſome Neighbours whom he called, found the contrary, and declared the whole to be ſufficient: ſo that the Arbitrators Determination, is acknowledged by a *Writ* produced for the Suſpender himſelf, which by all the Law of the World, proves againſt him.

3. The Arbitrators and Overſmans formal reducing their Determination to Writ, is indeed poſterior to the *5th* of *June*, but is long within a year after it. And ſince its not poſſible to Write out Decreets Arbitral the very moment of the Determination, there appears no other fixed time. But the Chargers caſe is ſpecial, in reſpect that their Inſtruments taken at the time, Inſtructs the Determination; and the Suſpenders Inſtrument acknowledges it as aforeſaid: both which are offered to be Inſtructed, by the Oaths of the Witneſſes inſert.

As to the Probation of the Suſpenders having hindered the Charger, to require before the firſt of *June*:

The Chargers coming with their Boats to the Port of *Wick*: their going thereafter upon the penult of *May*, and firſt of *June* to the Suſpenders houſe: his having induced them, and agreed with them that they ſhould firſt do their other Buſineſs in the Countrey *&c.* and thereby Impeded them under a ſhew of Friendſhip, to require their Hydes at that time; are all Matters of *Fact in re Mercatoria* mentioned in the Inſtruments, and conſequently the proper Subject of Probation by Witneſſes.

This was a *Delict*, or at leaſt a Matter of *Fact*, whence *Fraud* under *Truſt* is apparent: on which the Lords do always admit Witneſſes.

When the Suſpender did ſcrue himſelf under the Cloak of Friendſhip it was againſt the *nature* of the thing, and is altogether unuſual in friendly Agreements betwixt Merchants, to take Inſtruments: which is all the Suſpender requires in the caſe.

Finally, the Truth of this Matter of Fact, is Adminiculat by the Chargers Inſtrument produced, whereby it appears that the Suſpender did not deny this Truth, when the Chargers did inſiſt on it in their Inſtrument; ſo that Witneſſes ought to be allowed to prove it.

On the whole, the Lords would be pleaſed to Notice that the Chargers have a dangerous Party, by whom they have ſuſtained great loſs.

This is not truly a Penalty that is Charged for, but much leſs than their true Damnage and Intereſt; they having loſt their Mercat of theſe Hydes, the Fraught of their Boats and Seamen; their proper Charges in going to that Countrey, beſides the Expenſes of this Plea, *&c.* Whereas the Suſpenders whole ground of Juſtice lyes in this, *viz.* that the Chargers had delayed upon the Suſpenders fraudulent Inducement for three days; in which time ſuch ſalt *Stuff* could not poſſibly have become worſe, or the Suſpender having agreed as aforeſaid, have diſpoſed of them.